

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of July, 1997, served a true copy of the foregoing **FIRST AMENDED COUNTERCLAIM OF THE UNITED STATES OF AMERICA**, by placing same in the U. S. mails, postage prepaid, addressed as follows:

Shirley A. Smith, Esq.
Asst. U. S. Attorney
100 W. Liberty St., Suite 600
Reno, NV 89501-1930

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, CA 89706

Larry C. Reynolds, Esq.
Deputy Attorney General
State Engineer's Office
123 West Nye Lane
Carson City, NV 89710

R. Michael Turnipseed, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

Jim Weishaupt
Walker River Irrigation District
P. O. Box 820
Yerington, NV 89447

Scott McElroy
Greene, Meyer & McElroy
1007 Pearl Street, No. 220
Boulder, CO 80302

James T. Markle
State Water Res. Control Bd.
P. O. Box 100
Sacramento, CA 94814

John Davis, Esq.
Post Office Box 1646
Tonopah, NV 89049

John Kramer
Department of Water Resources
1416 Ninth Street
Sacramento, CA 94814

Rodger Johnson
Water Resources Control Bd.
State of California
Post Office Box 2000
Sacramento, CA 95810

Kelly R. Chase
Post Office Box 2800
Minden, NV 89423

Roger Bezayiff
Chief Dep. Water Commissioner
U. S. Bd. Water Commissioners
Post Office Box 853
Yerington, NV 89447

Ross E. De Lipkau
P. O. Box 2790
Reno, NV 89505

Linda A. Bowman, Esq.
Bowman & Robinson
499 West Plumb Lane, Suite 4
Reno, NV 89509

Gary Stone
290 South Arlington
Reno, NV 90510

Mary Hackenbracht, Esq.
Department of Justice
State of California
2101 Webster St., 12th Floor
Oakland, CA 94612-3049

Gordon H. DePaoli, Esq.
Woodburn, Wedge & Jeppson
P. O. Box 2311
Reno, NV 89505

Marta Adams, Esq.
Deputy Attorney General
State of Nevada
Division of Water Resources
100 N. Carson Street
Carson City, Nevada 89701-4717

Richard R. Greenfield, Esq.
Field Solicitor's Office
Department of the Interior
Two N. Central Ave., Suite 1130
Phoenix, AZ 85004-2383

1 George N. Benesch, Esq.
2 210 Marsh Avenue, Suite 105
3 Post Office Box 3498
4 Reno, Nevada 89509

5 Matthew R. Campbell, Esq.
6 David E. Moser, Esq.
7 McCutchen, Doyle, Brown & Enerson
8 3 Embarcadero Center
9 San Francisco, CA 94111

10 Donald B. Gilbert, Esq.
11 DeCuir & Somach, P.C.
12 400 Capitol Mall, Suite 1900
13 Sacramento, California 95814-4407

14 Treva J. Hearne, Esq.
15 Zeh, Polaha, Spoo & Hearne
16 450 Marsh Avenue 575 FOREST, SUITE 200
17 Reno, Nevada 89509

18 Robert C. Anderson and Timothy Lukas
19 Hale, Lane, Peck, Dennison, Howard
20 Anderson & Pearl
21 Post Office Box 3237
22 Reno, NV 89505

23
24
25
26
27
28
Deirdre Hills

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FILED
July 9, 2003

BY THOMAS S. WILSON
DEPUTY
IN EQUITY NO. C-125
SUBFILE NO. C-125-B

UNITED STATES OF AMERICA,

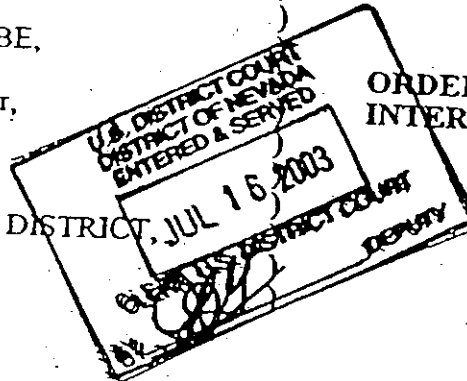
Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,



ORDER - DISCLAIMER OF
INTEREST

The following background information is provided to aid in understanding the reasons for and what is required by this Order.

1. The Court has ordered that certain persons and entities be included as parties in this action because they own water rights within one or more of the nine categories set forth in Paragraph 3 of the Court's April 18, 2000 Case Management Order.

2. It is possible that some of the specific persons or entities who are served with a Waiver of Service of Notice in Lieu of Summons, Notice of Lawsuit, or a Notice in Lieu of Summons do not belong in this action, because, for example, they may have sold or otherwise conveyed the ownership of all water rights subject to this action prior to being served.

3. A change in ownership of a water right can occur in a number of ways and for a variety of reasons. Often a change in ownership of a water right occurs when ownership of the land on which the water is used changes. A change in ownership may involve a sale, a gift, a death or even a divorce. It may also involve estate or business planning decisions, such as conveyance to an inter vivos trust or a limited liability company. Frequently, changes in ownership are accomplished by a deed. However, in an estate or divorce proceeding, they may be accomplished by an order of a court. These examples are not an exclusive list of all of the

206

1 ways in which a change in ownership may occur.

2 4. It is important that the Court and the Plaintiffs be notified if a person or entity
3 who receives service by mail or personal service does not, in fact, have any ownership interest
4 in a water right in any of the nine categories set forth in Paragraph 3 of the Court's April 18,
5 2000 Case Management Order. In addition, that person or entity need not be burdened with
6 this litigation and, if there was a change in ownership, a new party may need to be added to the
7 action. Before any such person may be omitted from this action, certain information and
8 documents will have to be provided to the Plaintiffs and the Court.

9 Based upon the foregoing, it is hereby ORDERED as follows:

10 1. If any person or entity receiving service by mail or personal service has no
11 interest in any water right within any of the nine categories set forth in Paragraph 3 of the *Case*
12 *Management Order* (Apr. 18, 2000)^{1/}, that person or entity shall notify the Court and the
13

14 You should review the *Case Management Order* and *First Amended Counterclaims* filed
15 by the United States and by the Walker River Paiute Tribe, which are included in the materials
16 served upon you. For convenience, the nine categories of persons and entities that the Court
17 has ordered to be served and named are listed here:

18 1. Category 3.a.: The successors in interest to all water rights holders under the Decree
19 (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to
20 Writ of Mandate, Etc. (April 24, 1940) ("Decree").

21 2. Category 3.b.: All holders of surface water rights under the laws of the States of
22 Nevada and California in the Walker River Basin who are not presently parties to this
23 adjudication.

24 3. Category 3.c.: All holders of permits or certificates to pump groundwater issued by
25 the State of Nevada and domestic users of groundwater within Sub Basins 107 (Smith
26 Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake Valley), and
27 110B (Walker Lake Subarea of the Walker Lake Valley).

28 4. Category 3.d.: All holders of permits or certificates to pump groundwater issued by
the State of Nevada within Sub Basins 106 (Antelope Valley), 109 (East Walker), and
110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

 5. Category 3.e.: All users of groundwater for irrigation in California in the Walker
River Basin.

1 United States in writing of that fact.

2 2. If such person or entity sold or otherwise conveyed ownership of all of the water
3 rights that the person or entity once owned before they were served or otherwise brought into
4 this action, in addition to disclaiming any interest in this action, they shall include a notice
5 providing the following information:

- 6 A. The name and address of the person or entity who sold or otherwise
7 conveyed ownership;
8 B. The name and address of each person or entity who acquired ownership;
9 and
10 C. A copy of the deed, court order or other document by which the change
11 in ownership was accomplished.

12 3. The disclaimer and notice shall be sent to the Court and counsel for the United
13 States, addressed as follows:

14 Linda Lea Sharer, Chief Deputy Clerk
15 United States District Court for the District of Nevada
16 400 South Virginia Street, Suite 301
17 Reno, NV 895501

18 Susan L. Schneider
19 United States Department of Justice
20 P.O. Box 756
21 Littleton, CO 80160

22 4. The form and substance of the disclaimer and notice shall substantially conform
23 to the form attached to this Order as Exhibit A.

24 5. Following their receipt from any person or entity disclaiming any interest in any

25 6. Category 3.f.: All holders of "vested rights" to the use of groundwater under the laws
26 of the State of Nevada within the Walker River Basin.

27 7. Category 3.g.: All municipal providers in Nevada within the Walker River Basin
28 who currently use groundwater.

8. Category 3.h.: All municipal providers in California within the Walker River Basin
who currently use groundwater.

9. Category 3.i.: All industrial users in Nevada within the Walker River Basin who
currently use groundwater.

1 of the water rights at issue in this case of a Waiver of Service of Notice in Lieu of Summons
2 and any Disclaimers of Interest and accompanying information and documents sought by this
3 Order, Plaintiffs will review the materials received and, if appropriate, seek the Court's
4 concurrence in omitting that person or entity filing such materials from this case.

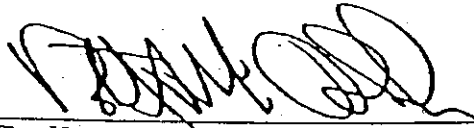
5 6. If Plaintiffs do not receive a Waiver of Service of Notice in Lieu of Summons
6 and must personally serve a person or entity that subsequently files a Disclaimer of Interest
7 pursuant to this Order, Plaintiffs will also review the materials received and, if appropriate,
8 seek the Court's concurrence in omitting the person or entity from this case, but that person or
9 entity may be subject to paying the costs related to formal personal service on them.

10 7. Despite the above provisions, any person or entity who files a Disclaimer of
11 Interest in this matter is ultimately responsible for the accuracy of this filing. Consequently,
12 any person or entity who files a Disclaimer of Interest, but, in fact, has water rights subject to
13 this litigation, shall nevertheless be bound by the results of this litigation.

14 8. Any person or entity subject to service under the Federal Rules of Civil
15 Procedure who receives notice of this action in the manner provided by Federal Rule of Civil
16 Procedure 4(d) remains subject to the duty to avoid unnecessary costs of serving the summons,
17 even if that person or entity ultimately disclaims any ownership interest in any of the water
18 rights described by Paragraph 3 of the Court's April 18, 2000 Case Management Order.

19 IT IS SO ORDERED:

20 Dated: July 9, 2003.

21
22 
23 The Honorable Robert A. McQuaid, Jr.
24 United States District Court Magistrate Judge
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)

)
)
) Plaintiff,) In Equity No. C-125-ECR
) Subfile No. C-125-B

WALKER RIVER PAIUTE TRIBE,)

)
) Plaintiff-Intervenor,) **DISCLAIMER OF INTEREST IN**
) **WATER RIGHTS AND NOTICE OF**
) **RELATED INFORMATION AND**
) **DOCUMENTATION SUPPORTING**
) **DISCLAIMER**

v.

WALKER RIVER IRRIGATION)

DISTRICT,)

a corporation, et al.,)

)
)
)
) Defendants.)

The undersigned counter-defendant in the above action hereby notifies the Court and the United States that the undersigned (or the entity on whose behalf the undersigned is acting) has no interest in any water right within the categories set forth in Paragraph 3 of the *Case Management Order* (Apr. 18, 2000) and, therefore, disclaims all interest in this action.

This disclaimer and notice shall be sent to the following two persons:

Linda Lea Sharer, Chief Deputy Clerk
United States District Court for the District of Nevada
400 South Virginia Street, Suite 301
Reno, NV 89501

And

Susan L. Schneider
United States Department of Justice
P.O. Box 756
Littleton, CO 80160

In addition, because the undersigned sold or otherwise conveyed ownership of all of the

1 water rights that the undersigned (or the entity on whose behalf the undersigned is acting) once
2 owned before the undersigned was served with a Waiver of Service of Notice in Lieu of
3 Summons or by a Notice in Lieu of Summons, the undersigned provides the following
4 additional information:

5 1. The name and address of the party or parties who sold or otherwise conveyed
6 ownership:

7 Name(s):

8
9 Street or P.O. Box:

10
11 Town or City:

12
13 State:

14
15 Zip Code:

16 2. The name and address of each person or entity who acquired ownership
17

18
19 Name(s):

20
21 Street or P.O. Box:

22
23 Town or City:

24
25 State:

26
27 Zip Code:
28

3. Attached to or included with this notice is a copy of the (check appropriate box(es)):

- ☐ Deed
- ☐ Court Order
- ☐ Other Document.

by which the change in ownership was accomplished.

4. The undersigned acknowledges that any person or entity who files a Disclaimer of Interest in this matter is ultimately responsible for the accuracy of this filing. Consequently, the undersigned acknowledges that any person or entity who files a Disclaimer of Interest, but, in fact, has water rights subject to this litigation, shall nevertheless be bound by the results of this litigation.

Executed this _____ day of _____ 200__

[signature of counter-defendant]

[name of counter-defendant]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[name, if applicable, of person acting on
behalf of counter-defendant]

[signature, if applicable, of person acting on
behalf of Counter-Defendant]

[address]

[telephone number]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FILED
13 JUL -9 PM 3:03

UNITED STATES OF AMERICA.

Plaintiff.

WALKER RIVER PAIUTE TRIBE.

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,

Defendants.

IN EQUITY NO. CV-125-ECR

SUBFILE NO. C-125-B

ORDER REGARDING
CHANGES IN OWNERSHIP
OF WATER RIGHTS

U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED
JUL 16 2003

CLERK U.S. DISTRICT COURT
BY

The following background information is provided to aid in understanding the reasons for and what is required by this Order:

1. The Court has ordered that certain persons and entities be included as parties to this action because they own water rights within one or more of the nine categories set forth in Paragraph 3 of the Court's *Case Management Order* (Apr. 18, 2000).

2. During the course of this action, it is possible that a party will sell or otherwise convey ownership of all or a portion of the water rights which that party owned when brought into this action by a Waiver of Service of Notice in Lieu of Summons or by service of a Notice in Lieu of Summons.

3. A change in ownership of a water right or a portion of a water right can occur in a number of ways and for a variety of reasons. Often a change in ownership of a water right occurs when ownership of some or all of the land on which the water is used changes. A change in ownership may involve a sale, a gift, a death or even a divorce. It may also involve estate or business planning decisions such as conveyance to an intervivos trust or a limited liability company. Frequently changes in ownership are accomplished by a deed. However, in an estate or divorce proceeding they may be accomplished by an order of a court. These examples are not

207.

1 a exclusive list of all of the ways in which a change in ownership may occur.

2 4. It is important that the Court and the Plaintiffs be notified of changes in the
3 ownership of water rights while this action is pending because among other things, a change in
4 ownership may require that a new party be included in the action, or that a present party be
5 dismissed or both.

6 Based upon the foregoing it is hereby ORDERED as follows:

7 1. If a party to this action sells or otherwise conveys ownership of all or a portion of
8 any water right within any of the nine categories set forth in Paragraph 3 of the *Case*
9 *Management Order* (Apr. 18, 2000)^{1/}, that party shall, within sixty days after any such change in
10

11 =/ You should review the *Case Management Order* and *First Amended Counterclaims* filed by
12 the United States and by the Walker River Paiute Tribe, which are included in the materials served
13 upon you. For convenience, the nine categories of persons and entities that the Court has ordered
to be served and named are listed here:

- 14 1. Category 3.a.: The successors in interest to all water rights holders under the Decree
15 (April 14, 1936), modified, Order of Entry of Amended Final Decree to Conform to
Writ of Mandate, Etc. (April 24, 1940) ("Decree").
- 16 2. Category 3.b.: All holders of surface water rights under the laws of the States of
17 Nevada and California in the Walker River Basin who are not presently parties to this
adjudication.
- 18 3. Category 3.c.: All holders of permits or certificates to pump groundwater issued by
19 the State of Nevada and domestic users of groundwater within Sub Basins 107
(Smith Valley), 108 (Mason Valley), 110A (Schurz Subarea of the Walker Lake
Valley), and 110B (Walker Lake Subarea of the Walker Lake Valley).
- 20 4. Category 3.d.: All holders of permits or certificates to pump groundwater issued by
21 the State of Nevada within Sub Basins 106 (Antelope Valley), and 109 (East
Walker), and 110C (Whiskey Flat-Hawthorne Subarea of Walker Lake Groundwater
Basin).
- 22 5. Category 3.e.: All users of groundwater for irrigation in California in the Walker
River Basin.
- 23 6. Category 3.f.: All holders of "vested rights" to the use of groundwater under the laws
24 of the State of Nevada within the Walker River Basin.
- 25 7. Category 3.g.: All municipal providers in Nevada within the Walker River Basin who
currently use groundwater.
- 26 8. Category 3.h.: All municipal providers in California within the Walker River Basin
who currently use groundwater.
- 27 9. Category 3.i.: All industrial users in Nevada within the Walker River Basin who
currently use groundwater.

ownership, notify the Court and the United States of the change in ownership.

2. The notice required by this Order shall provide the following information:

- A. The name and address of the party who sold or otherwise conveyed ownership;
- B. The name and address of each person or entity who acquired ownership; and
- C. A copy of the deed, court order or other document by which the change in ownership was accomplished.

3. The notice shall be sent to the Court and counsel for the United States addressed as follows:

Linda Lea Sharer, Chief Deputy Clerk
United States District Court for the District of Nevada
400 South Virginia Street, Suite 301
Reno, NV 89501

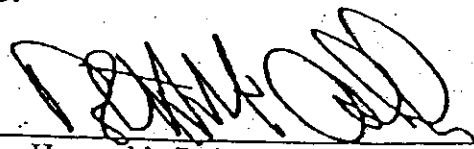
Susan L. Schneider
United States Department of Justice
P.O. Box 756
Littleton, CO 80160

4. The form and substance of the notice shall substantially conform to the form of notice attached to this order as Exhibit A.

5. Any person or entity who files a Notice of Change of Ownership of Water Right using the attached form or provides information for this purpose by other means is ultimately responsible for the accuracy of this filing. Consequently, any person or entity who files such a notice regarding water rights subject to this litigation, but retains such water rights, shall nevertheless be bound by the results of this litigation.

IT IS SO ORDERED:

Dated: July 9, 2003.


The Honorable Robert A. McQuaid, Jr.
United States District Court Magistrate Judge

UNITED STATES OF AMERICA,)
)
Plaintiff,) In Equity No. C-125-ECR
) Subfile No. C-125-B
WALKER RIVER PAIUTE TRIBE,)
)
Plaintiff-Intervenor,) **NOTICE OF CHANGE OF**
) **OWNERSHIP OF WATER RIGHT**
)
v.)
)
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
)
Defendants.)
)

1. The name and address of the party or parties who sold or otherwise conveyed ownership:

Street or P.O. Box

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Town or City State ZipCode

2. The name and address of each person or entity who acquired ownership

Name(s)

Street or P.O. Box

Town or City State ZipCode

3. Attached to or included with this notice is a copy of the (check appropriate box(es)):

- ☐ Deed
- ☐ Court Order
- ☐ Other Document.

by which the change in ownership was accomplished.

4. The undersigned acknowledges that any person or entity who files a Notice of Change of Ownership of Water Right using this form is ultimately responsible for the accuracy of this filing. Consequently, the undersigned acknowledges that any person or entity who files

* This notice shall be sent to the following two persons:

Linda Lea Sharer, Chief Deputy Clerk
United States District Court for the District of Nevada
400 South Virginia Street, Suite 301
Reno, NV 89501

And

Susan L. Schneider
United States Department of Justice
P.O. Box 756
Littleton, CO 80160

such an office, but retains such water rights, shall nevertheless, be bound by the results of this litigation.

Executed this _____ day of _____ 200__.

[signature of counter-defendant]

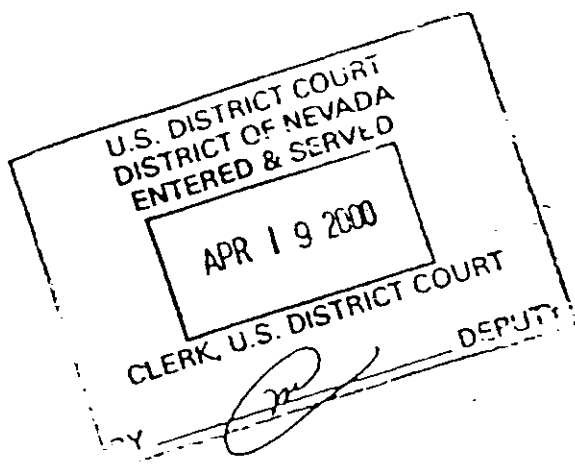
[name of counter-defendant]

[signature, if applicable, of person acting on behalf of counter-defendant]

[name, if applicable, of person acting on behalf of counter-defendant]

[address].

[telephone number]



FILED
CO. 116 PM 3:19
BY: L. E. WILSON
CLERK

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 WALKER RIVER PAIUTE TRIBE,
13 Plaintiff-Intervenor,

14 vs.

15 WALKER RIVER IRRIGATION DISTRICT,
a corporation, et al.,

16 Defendants.

17
18 UNITED STATES OF AMERICA,
19 WALKER RIVER PAIUTE TRIBE,

20 Counterclaimants,

21 v.

22 WALKER RIVER IRRIGATION DISTRICT,
et al.,

23 Counterdefendants.

24 The enormity and complexity of the issues pending with
25 respect to the First Amended counterclaims filed by the United
26 States and the Walker River Paiute Tribe certainly suggest that

In Equity No. C-125-ECR
Subfile No. C-125-B -

CASE MANAGEMENT ORDER

1 some sort of bifurcation would be helpful in processing the action.
2 Any such bifurcation may involve some duplication of work in
3 relation to subsequent phases of the case. There does not seem to
4 be any way to entirely avoid duplication, but we should endeavor to
5 do so to the extent that we can. Another major concern is whether
6 persons litigating in later phases of the case may find themselves
7 prejudiced by being bound by decisions and adjudications in earlier
8 phases where they did not participate. This, too, we should
9 endeavor to avoid.

10 Without bifurcation of some sort, the case may simply be
11 too big and too complex to process on a reasonable basis.

12 Having determined that some sort of bifurcation is
13 desirable and necessary, we conclude that, in general terms, the
14 proposal of the U.S./Tribe to bifurcate the "Tribal Claims" is as
15 good and logical a basis for dividing the case as has been
16 suggested or can be devised.

17 While many of the defenses to the claims of the
18 U.S./Tribe claims for the Walker River Paiute Indian Reservation
19 may be the same or similar to the defenses that may be offered with
20 respect to the remaining claims of the U.S. for other Indian
21 reservations and lands and federal enclaves and federal lands, each
22 of the remaining claims appears to require development of a
23 distinctly different factual scenario, as well as specific legal
24 basis. This presents one good reason to bifurcate as suggested by
25 the U.S./Tribe. Exactly how the defenses which overlap the claims
26 for the Walker River Paiute Indian Reservation will play out as to

1 each of the other separate claims is uncertain and adds
2 justification for the proposed bifurcation.

3 In the order that follows, we have expanded the
4 categories of water rights holders to be served with process
5 somewhat beyond the categories suggested by the U.S./Tribe in their
6 proposed case management order, but have not included all such
7 categories as have been suggested by the Walker River Irrigation
8 District and States of Nevada and California.

9 The categories to be served with process may be subject
10 to adjustment and modification by order of the Magistrate Judge as
11 he may find to be appropriate. However, we note that we have
12 limited domestic users to be served with process to those whom, it
13 appears, might be affected by pumping of underground water on the
14 Walker River Paiute Indian Reservation. If it is shown that other
15 domestic users could be affected by such pumping or that the
16 underground and surface water constitute a single hydrological
17 system where an earlier priority for the tribe for surface or
18 underground waters could affect the rights of other domestic users,
19 the Magistrate Judge should make an order expanding the category of
20 domestic users who are required to be served with process.

21 We have also expanded the categories of water rights
22 holders who have permits to pump groundwater issued by the State of
23 Nevada and who are required to be served with process to additional
24 Sub Basins in Nevada. This has been done because of the claim that
25 underground and surface waters constitute a single source.

26

1 These additional categories are also subject to
2 modification by the Magistrate Judge on the same basis as noted
3 above.

4 With the conclusion that the Tribal claims should be
5 bifurcated in mind, we then endeavor to devise a case management
6 order to provide for such bifurcation, taking into account the
7 companion considerations noted above.

8 IT IS, THEREFORE, HEREBY ORDERED that:

9 (1) The claims of the Tribe contained in the First
10 Amended Counterclaim of the Tribe and the claims of the U.S. on
11 behalf of the Tribe (First, Second, and Third Claims for Relief)
12 set forth in the First Amended Counterclaim of the U.S. are hereby
13 bifurcated from all other claims raised by the U.S. in its
14 pleading. The bifurcated claims are sometimes referred to herein
15 as the "Tribal Claims." Reference to the U.S./Tribe below refers
16 separately to the United States and its said claims, set forth in
17 its First Amended Counterclaim in behalf of the Tribe and to the
18 Walker River Paiute Tribe and its claims set forth in its First
19 Amended counterclaim.

20 (2) The Tribal Claims shall proceed as described in this
21 Case Management Order. All discovery and all other proceedings in
22 this action included in or in connection with the said First
23 Amended Counterclaims are stayed, until the further order of the
24 court, and except as provided in this order.

25 SERVICE OF PROCESS AND FILING OF LIS PENDENS
26

1 (3) Prior to the resolution of the Threshold issues
2 identified below, the U.S./Tribe shall effect service of their
3 respective First Amended Counterclaims, notices in lieu of summons,
4 requests for waiver of service, and the within Case Management
5 Order on all of the members of the categories of water rights
6 holders described below. Each of the members of each said category
7 shall be named as a Counterdefendant in this case.

8 (a) The successors in interest to all water rights
9 holders under the Decree (April 14, 1936), modified, Order for
10 Entry of Amended Final Decree to Conform to Writ of Mandate,
11 Etc. (April 24, 1940) ("1936" Decree).

12 (b) All holders of surface water rights under the laws
13 of the States of Nevada and California in the Walker River
14 Basin who are not presently parties to this adjudication.

15 (c) All holders of permits or certificates to pump
16 groundwater issued by the State of Nevada and domestic users
17 of groundwater within Sub Basins 107 (Smith Valley), 108
18 (Mason Valley), 110A (Schurz Subarea of the Walker Lake
19 Valley), and 110B (Walker Lake Subarea of the Walker Lake
20 Valley).

21 (d) All holders of permits or certificates to pump
22 groundwater issued by the State of Nevada within Sub Basins
23 106 (Antelope Valley), 109 (East Walker), and 110C (Whiskey
24 Flat-Hawthorne Subarea of Walker Lake Groundwater Basin).

25 (e) All users of groundwater for irrigation in
26 California. IN THE WALKER RIVER BASIN.

1 such changes, until service of process is complete on the
2 counterclaims.

3 (8) The U.S./Tribe may seek costs of service pursuant to
4 the requirement of Fed. R. Civ. P. 4(d) during their service
5 efforts under this Case Management Order.

6 (9) After the U.S./Tribe have received the information
7 and compiled the list of parties whom they intend to serve, that
8 list and a description of the procedures by which it was compiled
9 shall be filed and provided to the parties who shall have such
10 period of time as the Magistrate Judge shall determine to file
11 objections indicating whether the list is complete and includes all
12 such water rights claimants within the categories described in
13 paragraph (3) above who can reasonably be identified. The
14 Magistrate Judge shall consider and rule on all such objections.
15 Corrections to the list of intended parties may be made during the
16 period of the service of process upon appropriate notice and
17 approval of the Magistrate Judge.

18 Scheduling, Case Management

19 (10) Following completion of service of process on the
20 said counterclaims, the Magistrate Judge shall receive
21 recommendations of the parties for procedures for scheduling and
22 for the efficient management of the litigation given the number of
23 parties to the case. Such procedures may include the use of common
24 counsel, special procedures for service of pleadings, or any other
25 mechanisms deemed likely to reduce the burdens on the parties and
26 the court in a case of this magnitude. The Magistrate Judge shall

1 consider and make all appropriate rulings with respect to these
2 matters.

3 Threshold Issues Relative to Tribal Claims

4 (11) As soon as convenient after the entry of this order,
5 and upon appropriate notice to the parties presently appearing in
6 the case, the Magistrate Judge shall consider and make a
7 preliminary determination of the threshold issues to be addressed
8 at the outset of the litigation on the U.S./Tribe said
9 counterclaims. Scheduling of such consideration shall go forward
10 notwithstanding other proceedings provided for in this order. The
11 list of threshold issues regarding said claims will not be finally
12 resolved and settled by the Magistrate Judge until all appropriate
13 parties are joined. Nevertheless, the parties are directed to
14 identify all potential threshold issues promptly and to submit them
15 to the Magistrate Judge for consideration, as he shall direct, so
16 that action may proceed as promptly as possible upon conclusion of
17 service of process. In general, threshold issues, among others,
18 shall address jurisdiction, claim, preclusion, applicable law,
19 equitable and other defenses which may be raised by any party.

20 Among others, the Magistrate Judge shall consider
21 inclusion in the list of threshold issues to the resolution of the
22 said Tribal Claims to be addressed at the outset of the litigation:

23 (a) Whether this court has jurisdiction to adjudicate
24 the said Tribal Claims. If so, to what extent should the
25 court exercise its jurisdiction in these matters. In this
26 connection, what is the scope of this court's subject matter

1 jurisdiction to adjudicate the Tribal Claims to groundwater,
2 as well as to additional surface waters?

3 (b) Does federal law govern the pumping of groundwater
4 on the Walker Lake Paiute Indian Reservation by the Tribe or
5 the U.S. on its behalf?

6 (c) If the Tribe has the right to pump groundwater under
7 federal law, are such rights, as a matter of federal law,
8 subject to different protections than those provided by State
9 law?

10 (d) Whether the court has jurisdiction over groundwater
11 used pursuant to State law outside the exterior boundaries of
12 the Walker River Paiute Indian Reservation if such use
13 interferes with the Tribe's rights under federal law to use
14 water from the Walker River system. If so, should the court
15 exercise that jurisdiction?

16 (e) Whether equitable defenses bar some or all of the
17 said Tribal Claims. Within such time as shall be fixed by the
18 Magistrate Judge the parties now or hereafter appearing in the
19 case shall file for consideration by the Magistrate Judge a
20 statement as to any defenses or issues they intend to assert.

21
22 (f) Whether, regardless of the extent of hydrologic
23 connection between surface and groundwater, this court is
24 required to accept the distinction drawn between surface water
25 rights and groundwater rights provided by California and
26 Nevada law.

1 (g) Are the holders of surface water rights established
2 under federal law entitled to protection from the use of
3 groundwater beyond the protection provided to holders of
4 surface water rights established under state law.

5 (h) If the only jurisdiction of this court with respect
6 to groundwater issues is to protect surface water rights
7 established under federal law from interference by junior
8 groundwater users, must the issues of interference be decided
9 as a part of the adjudication of federal surface water claims.

10 Phasing of Proceedings

11 (12) Pretrial proceedings in this case with respect to
12 the Tribal Claims shall be conducted in multiple phases as follows:
13

14 (a) Phase I of the proceedings shall consist of the
15 threshold issues as identified and determined by the
16 Magistrate Judge.

17 (b) Phase II will involve completion and determination
18 on the merits of all matters relating to the said Tribal
19 Claims.

20 A Scheduling Order shall be entered by the Magistrate
21 Judge, in accordance with this order, and such other
22 appropriate matters as he shall consider necessary to provide
23 for completion of consideration of Phases I, II, and
24 subsequent phases in the case.

25 (c) Additional phases of the proceedings shall encompass
26 all remaining issues in the case. Such phases shall be

1 determined and scheduled by the Magistrate Judge and may, to
2 the extent he determines, overlap Phases I and II as
3 appropriate. We do anticipate, however, that the additional
4 phases will not be scheduled by the Magistrate Judge at least
5 until the threshold issues as set forth above have been
6 decided on the merits. The additional phases shall include,
7 but not be limited to:

8 (a) All other claims, crossclaims, counterclaims,
9 defenses and issues raised by the pleadings of the
10 parties that are not included in the threshold
11 issues.

12 (b) All other issues related to the Tribal Claims.

13 (c) All issues related to the other Federal Claims.

14 Responses to Process

15 (13) The notices in lieu of summons shall notify the
16 persons or entities served concerning how and when they must
17 respond. They shall be directed to file and serve upon the U.S.,
18 ^{DELETED PER ORDER 11/27/2007}
~~[the Tribe, the Walker River Irrigation District, the States of~~
19 ~~Nevada and California.]~~ within 60 days after completion of service
20 of process (or where service is by publication within 60 days after
21 the last day of publication of such service), a notice of
22 appearance and intent to participate. No Answers or other pleading
23 will be required except upon further order of the Magistrate Judge
24 entered thereafter. No default shall be taken for failure to
25 appear.

1 (14) Upon completion of Phase I it may be necessary to
2 join additional parties.

3 Discovery, Motions and Further Proceedings

4 (15) Once the Magistrate Judge has finally determined the
5 threshold issues, discovery shall be allowed to all parties on the
6 threshold issues. Discovery shall also be permitted during that
7 same time period concerning the basis for the Tribal Claims; such
8 discovery shall be limited to propounding of interrogatories and
9 requests for production of documents relating to the contentions of
10 the U.S./Tribe with respect to the basis for the Tribal Claims.

11 The discovery provided for in this paragraph (15) shall
12 be conducted for such period and according to such terms,
13 conditions, modifications and extensions to this order as shall be
14 determined to be appropriate by the Magistrate Judge.

15 As provided above, all other discovery is stayed.

16 (16) Motions which may be dispositive or partially
17 dispositive of any threshold issue shall be deferred until
18 completion of discovery as permitted by this order and shall be
19 filed thereafter within such time period and schedules for answers
20 and replies as shall be determined by the Magistrate Judge. Such
21 dispositive motions, however, will be decided by the undersigned
22 judge.

23 (17) To the extent the threshold issues are not resolved
24 by motions, an evidentiary hearing shall be held before the
25 undersigned judge at such time and according to such conditions
26

1 (including, as appropriate, the filing of joint prehearing orders
2 as shall be determined by the Magistrate Judge.

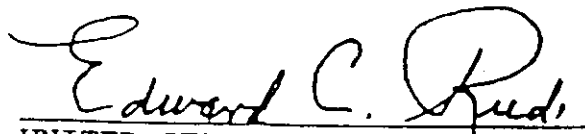
3 (18) If a party wishes to perpetuate testimony relevant
4 to this matter, that party shall comply with Fed. R. Civ. P. 27 and
5 any applicable Local Rule. The Magistrate Judge will consider and
6 determine all issues pertaining to perpetuation of testimony.

7 (19) Any party may move for modification of this Case
8 Management Order for good cause shown. The Magistrate Judge shall
9 have authority to change, modify and adjust this order. The
10 Magistrate Judge shall hold regular periodic status conferences at
11 times he shall determine, so that he and the parties may be advise
12 as to the progress of the case and problems encountered, so that
13 appropriate changes, modifications, and adjustments may be made in
14 this order and such problems addressed.

15 IT IS FURTHER ORDERED that the Joint Motion For Leave to
16 Serve First Amended Counterclaim filed by U.S./Tribe (#62) is
17 GRANTED on the basis and to the extent set forth in this order.

18 The motions (#67), (#90), (#96), and (#98) are all
19 considered ruled upon and decided as provided in the within order.

20 DATED: April 18, 2000.

21 
22 _____
23 UNITED STATES DISTRICT JUDGE
24
25
26